IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.48 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAYAJI INDUSTRIES

Versus

COMMISSIONER OF INCOME-TAX

Appearance:
1. INCOME TAX REFERENCE No. 48 of 1993
MR MJ SHAH for Applicant No. 1
MR TANVISH U BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 17/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The following two questions have been referred at the instance of the assessee by the Income-tax Appellant

Tribunal, Ahmedabad Bench 'C' under Section 256(1) of the Income-tax Act, 1961 (the Act).

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the reimbursement of medical expenses to directors and employees of the company was a part of salary and disallowance u/s. 40(c)/40A(5) of the Act ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that for the purpose of determining relief u/s.80I on profits of an industrial undertaking investment allowance u/s.32A should be deducted and relief at 25% u/s. 80I allowed on the balance of the profits?

2. The Assessment Year is 1982-83 and the relevant accounting period is the year ended on 31st March, 1982. Heard Mr.M.J.Shah, learned advocate for the applicant and Mr.T.U.Bhatt, learned Standing counsel for the respondent. It is common ground between the parties that the questions referred for the opinion of this Court stand concluded by earlier decisions of this Court and hence it is not necessary to set out the facts and contentions in detail.

3. Question No.1 stands answered by a decision of this Court rendered in the case of Commissioner of Income-tax Vs. Ambica Mills Ltd. [1999] 236 ITR 921 (Guj.). Applying the ratio of the said decision, question No.1 is answered in the affirmative i.e. in favour of the Revenue and against the assessee.

4. In so far as question No.2 is concerned, in the case of Commissioner of Income-tax Vs. Swastik Industries, [2002] 125 TAXMAN 175 (Guj.), this Court has applied the ratio of decision of the Hon'ble Supreme Court in Cambay Electric Supply Industrial Co. Ltd. Vs. Commissioner of Income Tax, [1978] 113 ITR 84 and held against the assessee after considering the scheme of the Act. Applying the ratio of the said decision, question No.2 is answered in the affirmative i.e. in favour of the Revenue and against the assessee.

5. The Reference stands disposed of. There shall be no order as to costs.

Sd/- Sd/-

[D.A.MEHTA,J] [H.N.DEVANI,J]

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